

The Solicitors' Journal

VOL. LXXXVIII.

Saturday, February 12, 1944.

No. 7

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Editorial, Publishing and Advertisement Offices: 29-31, Breems Buildings, London, E.C.4. Telephone: Holborn 1403.

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Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy*: 1s. 4d., *post free*.

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Current Topics.

Solicitors' Remuneration.

WELCOME indeed is the news, given by the President of The Law Society at the Special General Meeting of The Law Society on 28th January, 1944 (*ante*, p. 51), that as a result of a recent memorandum from the Council of The Law Society to the Lord Chancellor, and a deputation from that body to the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls, the remuneration of solicitors is to be increased by 12½ per cent. in respect of all branches of their work. As Mr. BIRD explained, this means that the charges which were prescribed in 1882, and which have only once been increased, namely, by 33½ per cent. after the 1914-18 War, will, as from the beginning of March, 1944, be increased by 50 per cent. on the 1882 scale, instead of as at present 33½ per cent. The requisite orders are expected to come into operation on 1st March, except in the case of bankruptcy matters, where the requisite order must lie on the table for forty instead of thirty days; that order will therefore come into operation on 10th March. Not only does this new event substantiate the claim of solicitors to increased remuneration having regard to their higher overhead charges, but it completely vindicates their claim, which was based on a careful calculation of the factors involved (see 87 SOL. J., p. 232). The mere fact that there has been no increase in solicitors' remuneration since the 1914-18 War, and such increase as was then imposed compared very unfavourably with the rise in the general level of prices, is sufficient to dispose of the popular superstition that they belong to an overpaid profession. An impartial examination of the facts shows that the contrary is true in the vast majority of instances, and what has been granted is only, as Mr. BIRD pointed out, a mere modest recognition of solicitors' difficulties and needs, and has been more than amply earned.

Grants out of the Compensation Fund.

ANOTHER matter which should not escape the attention of solicitors was mentioned by the President of The Law Society at the same meeting (*ante*, p. 51). This was his advice to members who may be instructed at any time to submit applications for grants out of the Compensation Fund. He urged them to take care to see that such applications are lodged in the form required by the Rules and are accompanied by proof of the loss, and also of the fact that a solicitor, or his clerk, has been guilty of dishonesty. No payment, the President said, may be made in respect of any loss which first came to the knowledge of the loser before 15th November, 1942, and the committee must be further satisfied that such loss is attributable to the dishonesty just mentioned. The committee had examined every claim—some 113 in number—and had made immediate grants in all cases of hardship. Apart from any such claims, all losses up to £500 had been paid in full, and in every other case where the committee were satisfied that it was proper for a grant to be made, the applicants had received payments on account. The committee had thought it right to adopt a prudent policy in fixing the grants in each particular case, bearing in mind that the extent of the claims on the fund must necessarily be problematical, mainly because it came into operation without, as was the original intention, the protection afforded by the compulsory annual inspection of solicitors' accounts, which must of necessity be postponed until sufficient accountants were available. The committee hoped during the current year to make immediate grants on the admission of a claim without waiting until the conclusion of the year as was thought wise during the first year. Mr. BIRD added that many letters of appreciation had been received from those assisted.

Pay as You Earn.

IT will be remembered that a promise was given by the CHANCELLOR OF THE EXCHEQUER last year to extend the "pay as you earn" method of collection of income tax to all Sched. E taxpayers. The Income Tax (Employments) Act, 1943, applied the method to wage-earners and also to salary-earners with incomes not exceeding £600 a year. The Income Tax (Offices and Employments) Bill, the text of which was published on 2nd February, will, when passed, remove the £600 limit and bring between 1,500,000 and 2,000,000 taxpayers within the "pay as you earn" method of collection. The number of taxpayers subject to the scheme will be about 13,000,000, out of a total of some 14,500,000. The Bill excepts from its operation "pay, pensions or other emoluments payable in respect of service in or with the armed forces of the Crown." On the other hand, all annuities paid out of approved superannuation funds which, when assessed direct, are at present assessed under Sched. D, are to be transferred to Sched. E (cl. 2). To safeguard the Revenue against loss due to the application of the scheme to cases where the preceding year's basis of assessment applies, it is provided that certain increases in remuneration are to be chargeable to tax. If the actual income of 1943-44 or any previous year is increased by a grant of additional remuneration after 20th September, 1943, or by a change in the conditions of service after that date, the amount of the increase is to be added to the 1943-44 assessment, but will not rank for discharge. This will not apply to ordinary increases of pay due to promotion, increment, overtime paid for at ordinary rates or "to any other similar increases of an ordinary character," e.g., Christmas bonuses. Tax is deductible under the "pay as you earn" scheme from any payment made after 5th April, 1944, irrespective of the period in which the income was earned. Outstanding arrears of income tax and Sched. E income tax for 1942-3 and previous years are to be discharged in the case of persons in the service of the Crown on 6th April, 1944, where the arrears are in respect of a former office or employment which fell due for payment after the employee entered Crown service and are unpaid up to 6th April, 1944. Income from an office or employment held by a professional man in the course of his profession and normally assessed under Sched. D will not be subject to tax deduction. This will relieve many professional men from the burden of being subject to a dual system of collection.

Rent Control.

AN outstanding feature of the debate in the Lords on rent control on 3rd February, 1944, was the emphasis laid on the need for an amelioration of the position of the landlord with a small property as his only investment, and particularly of the landlord who seeks possession of his own property to reside in himself, and is faced with the difficulty of proving his case under the "hardship" provisions of para. (b) of the First Schedule to the 1933 Act, or even in some cases of having to prove the existence of alternative accommodation. VISCOUNT MAUGHAM, perhaps, over-stated the matter when he said that in the county court half the time of the learned judge is occupied in dealing with hardship cases; but they certainly occupy a substantial portion of the judge's time in many county courts. The case, cited by VISCOUNT BUCKMASTER, of the unfortunate retired policeman, who saved £800 and invested it in purchasing a house which later was discovered to be subject to a standard rent of £13 a year, and of which he could not recover possession because of the hardship provision in the 1933 Act, is by no means a rare type of case. The conclusion which VISCOUNT BUCKMASTER said that the story might have, though it was not in fact the sequel, that the owner could sell to the tenant for £200, and the tenant might then sell the property for £1,000, is not an impossible consequence of this state of the law. While the object of the Acts is not to

penalise landlords, as the MASTER OF THE ROLLS said recently, in *Cumming v. Danson*, 87 Sol. J. 21, it, nevertheless, does so. It is to the credit of the county court bench that most judges are prepared to say, and we believe it to be sound law, that *prima facie* an owner is entitled to possession of his own house for his own use. The present grievance of small owners of property is best illustrated by the case of *Davies v. Warwick* [1943] 1 K.B. 329, cited by VISCOUNT MAUGHAM, in which the plaintiff recovered ninety-seven times the difference between 4s. 3d., the rent at which the house was let during the last war, and 12s. 6d. the rent at which it was let during this war. That case underlined the remarkable fact that there are cases in which the "standard rent" may be the rent charged in the reign of Elizabeth. VISCOUNT BUCKMASTER's statement that in a large volume of correspondence which he received not one letter came from a tenant suggesting that his position was an unfair or an unhappy one, contrasted with the statement by LORD NATHAN that, while he did not suggest that landlords had no justification for complaint, in the position which he had until recently occupied in a large organisation he had met with the difficulties experienced by tenants. LORD NATHAN seemed to favour the idea of "fair rent courts, where there should be a procedure, not too rigid or legalistic a character, but . . . with an atmosphere of regulated informality." His lordship also tentatively suggested that the rent of furnished houses and furnished rooms should be what the controlled rent would be if they were unfurnished, together with a reasonable and fair percentage for the furniture comprised in the furnished letting. As to the other question dealt with in the debate, the difference between the status of and returns from the privately-built house and that built with State help or under State control, some solution will have to be found if private builders and public corporations are to continue to co-operate in the great peace-time work of rehousing. On the subject of rent control, the main result of the debate is the assurance by the LORD CHANCELLOR that the Government would "certainly without delay pay the closest attention" to the report of the Ridley Committee, and hoped "to be able to introduce legislation without undue delay to deal with this subject in a comprehensive fashion."

Legislation by Reference.

ANOTHER useful line of discussion opened by the recent debate in the Lords on rent control dealt with the evils of legislation by reference. VISCOUNT MAUGHAM spoke of the Rent Acts as "a quagmire of legislation" framed in "hasty and ill-considered language," and was sure that the system of legislation by reference was wrong, and that "the imagined power of the Houses of Parliament to understand legislation before it becomes law is being scoffed at, so to speak, by this system of cleverly drawn amending referential Bills which none of us have a chance of understanding." LORD NATHAN supported this view and said that "the complexity of our legislation is now such that every effort should be made to make that legislation intelligible to the ordinary citizen." He made an appeal to the Lord Chancellor that, so far as the task does not overwhelm the draftsmen, who are already hard pressed, he would clear the ground for the post-war period by extending his activities so far as consolidation was concerned. VISCOUNT BLEDSLOE also earnestly hoped that legislation by reference would be curtailed, if not discontinued altogether, in this country. He also protested against "legal jargon and the ingenious complexities that are framed by the very shrewd legal staffs of the various Government Departments." The LORD CHANCELLOR did not think that the statutes now on the statute book about rent restrictions lent themselves very easily to the process of consolidation, because the primary need was "to meet special conditions and difficulties caused by or arising out of war, and, of course, those conditions tend to vary from time to time." To put the Acts into one Act of Parliament "would merely be to write down over again those provisions which differ according to different dates and circumstances." The LORD CHANCELLOR spoke of "the chase of that stout old fox, the obscurity of Acts of Parliament" and "the great advantage of having them in nice plain English." The truth was, the LORD CHANCELLOR said, that if you had legislation dealing with a complicated subject, it was likely to take a rather complicated form. It was not true that the Acts presented to Parliament were either ingeniously devised so as to add to the emoluments of lawyers or in order to gratify the ideas of shrewd legal staffs. Every single word that was written down in any clause must pass the scrutiny of Parliament. "and anybody might move on page 6, line 10, after so and so, to leave out 'and' and to insert 'but' without the slightest regard as to whether the change was going to make the matter more obscure." His lordship referred to the method obtaining in Canada, whereby at suitable intervals the Parliament of Canada passed a law authorising the Governor General to appoint a commission to revise the statutes up to date. This was done under the authority of Parliament, but it was a very different thing from passing every single section of the revision through Parliament. As to a system like that of the continental *rappoteurs*, by which a small committee of both Houses at the end of the process of passing an Act of Parliament put in front of it an exposition explaining what Parliament really meant, it was conceivable

that that might be of great assistance if it were lawful; but so long as you had to do these things in this very minute way it could be seen at once "how difficult it was to satisfy the natural desire of everybody to get an Act of Parliament so clearly expressed that one need not look up any other Act of Parliament at all." VISCOUNT SIMON's apt quotation "*Vous l'avez voulu, Georges Dandin!*" will appeal to all lawyers who will also appreciate this most convincing answer for a long time to the familiar charge that only the lawyers are responsible for the obscurity of the law.

Company Law Amendment.

THE minutes of evidence taken on the fourth, fifth and sixth sitting days of the Company Law Amendment Committee constitute a formidable document of some 138 foolscap pages, closely printed in two columns. For the company lawyer it is packed with interest, for it contains evidence and memoranda from such outstanding legal authorities in their own sphere as Sir ARTHUR STIEBEL, the Chief Registrar in Companies (Winding-up), Sir EDWARD TINDAL ATKINSON, K.C.B., C.B.E., The Director of Public Prosecutions, and Mr. H. WYNN PARRY, K.C., and Mr. CECIL WILLIE TURNER. Among the interesting topics discussed were shares of no par value, information to the public by private companies, shares and debentures held by nominees, financial relations between companies (including subsidiary companies) and directors and former directors, accounts—especially those of holding companies, shareholders' control, the declaration of solvency, underwriting, prospectuses and offers for sale and investigations of the affairs of companies. Sir ARTHUR STIEBEL held that if shares of no par value are to be allowed some provision will be required to avoid sub-divisions which would halve dividends while not reducing the amount going to each shareholder, where trouble with workpeople or trade unions is expected owing to some dividend. He also thought that it was essential that private companies should give at least as much information to the world at large as do larger companies. In private companies "the one man with the help of suitable articles can condone everything except fraudulent preference (s. 265), avoidance of floating charges (s. 266), and fraudulent trading (s. 275), and other acts which are *ultra vires* the company." Holding companies, Sir ARTHUR STIEBEL thought, should prepare an audited consolidated balance sheet and profit and loss account in addition to a separate balance sheet and profit and loss account. The memorandum submitted by Mr. H. WYNN PARRY, K.C., and Mr. CECIL WILLIE TURNER, suggested that s. 37 (1) (d), imposing liability for damage sustained "by reason of any untrue statement" in a prospectus, etc., should be amended so as to include liability for the omission of any material information, which might be just as mischievous as an untrue statement. It also put forward the view that private companies should be put on the same footing as public companies regarding disclosure and circulation of accounts. Both the Registrar and Messrs. WYNN PARRY and TURNER agreed that it is impracticable to provide for a general disclosure of the beneficial interest in shares held by nominees, the Registrar because he could not see what good legislation could do to prevent any ill results of secrecy, and Messrs. WYNN PARRY and TURNER because of the enormous burden and expense of registration of beneficial interest in the company's register and with the Registrar of Companies. The Director of Public Prosecutions referred, among other things, to the difficulty experienced in *R. v. Kylsant* [1932] 1 K.B. 442, and *R. v. Bishirigian*, 25 Cr. App. Rep. 176, of proving the defendants' personal knowledge of and responsibility for the statements complained of. The remedy, the Director stated, was to shift the onus of proof to the defence, on the analogy of s. 356 (6) of the Companies Act, 1929, s. 29 of the Betting and Lotteries Act, 1934 and s. 18 of the Price of Goods Act, 1939. He also supported a recommendation for increased powers of inspection. Evidence was also given on behalf of the Chartered Institute of Secretaries, and the Institute of Industrial Administration and by Mr. A. W. ACWORTH and Mr. A. WHITWORTH.

Recent Decisions.

In *Garrin v. Police Authority for the City of London*, on 2nd February (*The Times*, 3rd February), a Divisional Court (HUMPHREYS, ASQUITH and CASSELS, JJ.) held that tuberculosis resulting from irregular eating, exposure, long hours and mental strain while on duty in London during the air raids was an injury causing infirmity of the body, within s. 2 (1) (c) of the Police Pensions Act, 1921, and was an injury received in the execution of the claimant's duty without his default, within s. 33 of the Act, although it was impossible to establish any particular day on which the infection occurred, and that the claimant was therefore entitled to a pension.

In *Midland Bank Executor and Trustee Co., Ltd. v. Attorney-General*, on 3rd February (*The Times*, 4th February), the Court of Appeal (the MASTER OF THE ROLLS, MACKINNON and LUXMOORE, L.J.J.) held, reversing the decision of BENNETT, J., that a bequest to executors upon trust in their absolute discretion to apply the bequeathed fund "to the medical profession for the furtherance of psychological healing in accordance with the teachings of Jesus Christ" was a valid charitable bequest.

A Conveyancer's Diary.

Soldiers' Wills.

THE publication of the report of *Re Anderson* [1944] P. 1, is a suitable opportunity to review the rather confusing development of the doctrine of "soldiers' wills" during this war. I need not here restate the enactments on which the doctrine depends: for that, it will suffice to refer to the "Diary" of 14th October, 1939, where the position at the beginning of the war was fully set out, and most of the earlier cases were cited. All the four reported decisions in this war are on the question whether the alleged testator was, or was not, at the date of the will which it is sought to set up, a soldier "in actual military service." The point, indeed, is narrower even than that, since all the four reported cases of this war are about the position of testators who were claimed to have made wills in this country.

The earliest case was *Re Gibson* [1941] P. 118. The report is only in the form of a note and is not very satisfactory. The application was in respect of the estate of Lieutenant-Colonel Gibson of the Army Dental Corps. It is not stated at what date the will was made, and there is no reason to think that it was just before his death, which occurred when his house was destroyed by a bomb in October, 1940. At that date he was attached to a command headquarters some miles away, but was living at home, and it is, perhaps, a fair inference that such was also the case at the date of the alleged will, that being the material date. Henn Collins, J., refused to admit the will to probate in spite of the applicants' argument that "in this war this country is just as much a battle zone as many places abroad." The learned judge said that the ordinary civilian might, in the circumstances of the present war, be said to be in the front rank of the fighting, but that he did not see how a man who was carrying out his ordinary professional peace-time duties could be thought to have the testamentary privileges of a fighting soldier just because he was under military authority.

Re Gibson was mentioned in argument in *Re Spark* [1941] P. 115, but does not appear seriously to have influenced the decision there. In *Re Spark* the testator was a private soldier: he had been mobilised as a member of the Territorial Forces on 1st September, 1939. On that day he saw his solicitor and gave instructions for a will, but never took any further step in the matter. On 5th August, 1940, he said to another soldier: "I wish my wife to have all I have in case I get killed." On 7th August, 1940, he was mortally wounded by a bomb. On 8th August, 1940, he died, but before doing so he referred again to his declaration in his wife's favour. There are some rather curious points about this case. The learned judge pronounced in favour of the oral will of 5th August, 1940. But if he had not done so, it seems that the instructions given to the solicitor on 1st September, 1939, would have been admissible: according to Lord Merriman, P., in *Re Anderson*, such instructions are sufficient, and if *Re Rippon* [1943] P. 61, was correctly decided, the testator in *Re Spark* must have been in *expeditione* on 1st September, 1939. The learned judge mentioned that the cases of the last war had suggested that, in the circumstances of that war, a soldier in England was not in *expeditione* unless he was under orders to go abroad. But, he added, "it is quite clear that in the present war the extent of military operations has been very much enlarged, in depth and in height; . . . the scope of military operations is very much larger, and it seems to me that a soldier who is in camp (even though he is in England and not under orders to proceed overseas) is thereby a mark for enemy action and is in a position in which he is in 'actual military service.'" This reasoning seems at first sight to be rather questionable: it is not only soldiers in camp who are "marks for enemy action": Lieut.-Colonel Gibson was a victim of such action although he was held not to be in *expeditione*, and so also many civilians have been. The report does not say where Private Spark was stationed, for obvious reasons. But the court presumably did know, and that may perhaps have influenced the decision. For example, if he had been in a camp near the South Coast at the date in question, at which invasion of that coast was hourly expected, it would be difficult to deny that he was in *expeditione*, entirely apart from the danger of bombs.

Re Rippon [1943] P. 61, appears to go much farther than *Re Spark*. There the testator was killed in the campaign in the Low Countries in 1940, but the will was made before the war, on 25th August, 1939, on which date the testator was "called out for service" under the Reserve and Auxiliary Forces Act, 1939. The gist of the judgment of Pilcher, J., was that "the situation which prevailed during the last week of August, 1939, was totally different from any which has existed in this country, at any rate, since the Napoleonic wars." He relied on a passage in the legislation which permitted the Secretary of State to call out men for service "for ensuring the defence of the realm against external danger," a phrase which, he said, connoted either invasion or aerial bombardment. Pilcher, J., also relied on a passage in the judgment of Sir Francis Jeune in *Re Hiscock* [1901] P. 78, where it was suggested that in case of invasion or civil war a man might be in *expeditione* if he was "taken from home to man the walls or defences of his own native town." If it were not for the reference to the unusual situation existing in the last

week of August, 1939, it would be very difficult to read this decision as meaning anything less than that every soldier in England once called out for service in this war is in *expeditione* so soon as he has received orders which will result in his being "taken from his home." (Thus put, the rule would just enable one to say that *Re Gibson* was rightly decided, since Lieut.-Colonel Gibson was still living in his home. But the distinction seems dubious: Hector must surely have been in *expeditione* during the siege of Troy, but he lived in his own house.) It is difficult to see that the reference to the last week of August, 1939, is really logical. Doubtless, the situation was an unusual one for times of nominal peace, but the risk of air attack occurring was no greater then than it has been ever since. It seems very doubtful whether the risk of air attack can be the true criterion. If it is, then one must either say that it has been so continuous and extensive that any soldier in Great Britain under orders to leave, or who has left, his home has been in *expeditione* throughout the whole war (and some since earlier), or one would have to embark on an impossible inquiry as to the liability of various areas to attack at various times. I cannot help thinking that a truer test is that the soldier must both have been taken from his home and must also be liable to be engaged in active fighting at short notice. By this test, *Re Gibson* was rightly decided: so also was *Re Spark*, on the footing that invasion was hourly expected at the date of the will, and still more so if the testator was near the South Coast. As to *Re Rippon*, the testator certainly had received orders which would cause him to leave home, and they had been received in circumstances in which it was necessary to forestall external danger, a course likely to involve fighting. But *Re Rippon* seems a good deal more doubtful than the other two cases. The importance of getting clear what the rule really is can be seen if one inquires what would be the position of a nuncupative will made in England in January, 1944 by a soldier not under actual orders to go abroad. No one now expects invasion of this country; but air attacks still can and do occur. It seems most unlikely that a will informally made in such circumstances would be valid.

Finally, we come to *Re Anderson*, where the "will" propounded consisted of instructions for a will given by a Home Guard on 25th July, 1941. The testator was accidentally shot while on duty a week later. The learned President refused to admit the alleged will to probate. In his judgment he first made certain general observations. He pointed out that the material date for deciding whether the testator is in *expeditione* is that when the will was made, not that of the death. But if death occurs in "service conditions," the circumstances of death may be relevant in considering the nature of the preceding service. Again, the fact that soldiers in *expeditione* are often *inops consilii* was doubtless one of the historical foundations for the privilege, but it is not relevant to consider in any given case whether the testator was in that difficulty. Again, the question whether the testator is in *expeditione* has to be determined in relation to the testator and not to all or some part of the Forces of the Crown.

Turning to the peculiar position of Home Guards, the President read a number of the regulations, and called attention to the safeguards under which, unless the Home Guard is mustered, a member of the Home Guard cannot be made to live away from home and must not have his other work interfered with. He also pointed to the distinction which the regulations make between "on duty" and "off duty," and to the fact that a particular unit or member of a unit may be charged with doing "operational duty" although the Home Guard as such has not been "mustered," a position which can only arise to deal with actual or apprehended invasion. It is possible for members of the Home Guard to be made to live away from home if, but only if, the Home Guard is mustered. It is fairly clear that if the Home Guard is ever mustered, all its members will be assimilated to regular soldiers for the purposes of making privileged wills. But, owing to the fact that they are not uprooted from their homes in any circumstances short of muster, it seems impossible to say that any member of the Home Guard is qualified to make a "soldier's will" until muster. The learned President thought that there might be cases of difficulty in the intermediate circumstances of a man called out on operational duties to assist the civil defence authorities during heavy air-raids, which he said would or might involve reconciling or choosing between *Re Spark* and *Re Gibson*. With great respect, I suggest that the thread running through all these cases is the test whether the man has left, or is under orders to leave, his home with fighting in prospect. Though individual members of the Home Guard may go into action, none of them can be uprooted from their homes except if the Home Guard is mustered.

At the monthly meeting of the directors of the Solicitors Benevolent Association, held at 60, Carey Street, W.C.2, on the 2nd February, 1944, the Chairman referred to the grievous loss sustained by the Association by the deaths of Sir A. Norman Hill, Bart., and Mr. Robert Chancellor Nesbitt, Directors and past Chairmen, and resolutions were passed putting on record the Board's appreciation of the devoted services and generous support given by them for many years. Mr. William George Weller (Bromley) President of the Kent Law Society, was elected a Director. Grants amounting to £1,076 7s. were made to twenty-three beneficiaries.

Landlord and Tenant Notebook.

Scope of the Landlord and Tenant (War Damage) Act, 1939, s. 1 (1).

THE case of *Turley v. King*, an appeal from a petty sessional court to a Divisional Court, reported in *The Times* of 25th January, draws attention to the limits of the relief provided by the Landlord and Tenant (War Damage) Act, 1939, s. 1 (1).

The short facts were that roofs of a couple of houses developed leaks in consequence of damage by enemy action; and the appellant, the local sanitary inspector, served nuisance abatement notices on their owner and landlord, the respondent. The notices were served under the Public Health Act, 1936, s. 93 (the present report says "s. 94," but I think this is a misprint), the matter being a "statutory nuisance" within the meaning of para. (a) of subs. (1) of the previous section: "Any premises in such a state as to be prejudicial to health or a nuisance." In proceedings for failing to comply with the notice, brought, presumably, under s. 94, the respondent successfully pleaded that the Landlord and Tenant (War Damage) Act, 1939, s. 1 (1), relieved him from liability to make good war damage.

The appeal was allowed. The subsection relied upon runs: "Where, by virtue of the provisions (whether express or implied) of a disposition or of any contract collateral thereto, an obligation . . . is imposed on any person to do any repairs in relation to the land comprised in the disposition, those provisions shall be construed as not extending to the imposition of any liability on that person to make good any war damage occurring to the land so comprised." The argument advanced for the respondent, that the subsection applied because the proceedings were, in effect, proceedings calling upon a landlord to repair demised premises, was rejected; the enactment did not apply to "statutory nuisances."

It is, probably, extremely rare for a sanitary inspector to call upon any property owner to abate a nuisance on undemised premises. This consideration may have influenced the justices, who may have regarded the legislation as "for the benefit of tenants," but I think the fundamental mistake was what I might call "expecting too much" from the Landlord and Tenant (War Damage) Act, 1939.

It is fair to say that the draftsmen of that statute have apparently, to use another colloquialism, "thought of everything." The words of the first section are wide, and the definitions of "war damage" and "unfit" in s. 24 show that imagination and forethought were carefully exercised. (True, some tenants who have had to evacuate their premises for a week or so while delayed action bombs were being dealt with have had occasion to grumble at the failure to relieve them from liability for rent; but this may merely show that there are limits to imagination and foresight.) For when I say "thought of everything" I mean of everything they were asked to think of; and their primary task was, I suggest, to find words which would dispose of the law laid down in *Paradine v. Jane* (1647) Aleyn 26.

The principle followed in that case, in which a farm tenant's defence to an action for rent was that he had been evicted by reason of what would now be called "enemy action" (cavalry under Prince Rupert, whom he described as a certain German Prince . . . an alien born, enemy to the King), was clear: where a party by his own contract creates a duty upon himself he is bound to make it good notwithstanding any accident by inevitable necessity, but if non-performance is due to a change in the law he is excused. In other words, he "should have thought of that before." The development of the doctrine of frustration has undoubtedly modified the rule—but not in the case of tenancies (see 87 Sol. J. 3 and 360).

But it is right to say that s. 1 (1) does more than get rid of the law in *Paradine v. Jane*, for it applies to obligations imposed by "a disposition" in general, as well as to those imposed by a contract in particular. And subs. (6) says: "Where a disposition is made under or in pursuance of an enactment which imposes an obligation to repair in relation to the land the subject of the disposition, the obligation shall be deemed for the purposes of this section to have been imposed by virtue of the provisions of the disposition." I do not think that the justices in *Turley v. King* can have taken the line that as the Public Health Act, 1936, applied to the property an obligation to repair was imposed by virtue of the tenancy agreement granted by the defendant; but in connection with a passage from a judgment in the Divisional Court, that of Humphreys, J., the circumstance provokes the question: Suppose the obligation be imposed by importing a covenant into a tenancy agreement, what is the position when the letting is of a dwelling-house within the limits set by s. 2 of the Housing Act, 1936?

His lordship said that where he thought that the justices had misdirected themselves was in holding that the relief of the landlord's obligation to repair, whether that obligation arose from the terms on which the premises were let, or by virtue of the statutory provisions of the *Housing Act*, 1936, or possibly under both, had anything to do with the duty of an owner of property, who had allowed a statutory nuisance to continue on his property, to abate that nuisance.

The reference to the *Housing Act* reminds us that has been held to place the tenant in the position of a covenantor, so that he can bring an action for damages for breach of the undertaking that the house will be kept by the landlord in all respects reasonably fit for human habitation. This was laid down in *Walker v. Hobbs* (1889), 23 Q.B.D. 458; more recently, *Morgan v. Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), showed that the landlord was entitled to notice of disrepair before being liable, because he was in the position of a covenantor.

The judgment clearly indicates, then, that the Landlord and Tenant (War Damage) Act, 1939, s. 1 (1), would provide a landlord with a defence to an action brought on the statutory covenant if the defect complained of were war damage.

I would submit that if "statutory nuisance" is not excused by the Act (incidentally it was not suggested in *Lease v. Egerton* (1913), 59 T.L.R. 191, that common law nuisance would be excused) nor would a breach of a by-law made under s. 6 (1) of the *Housing Act*, 1936, be so excused. Among the purposes for which such by-laws may be made are (c) for enforcing drainage and promoting cleanliness and ventilation of working-class houses, (h) for the provision of handrails for staircases, (i) for securing the adequate lighting of every room—to name but three instances of a possible overlapping of matters covered by three enactments: the *Housing Act*, 1936, s. 2; *ib.*, s. 6 (1); and the *Public Health Act*, 1936, s. 93. So it would appear that if, say, the drainage system of working-class houses let at not more than £26 a year were put out of order by war damage, the tenant could not bring an action, but the local authority could proceed for breach of an appropriate by-law besides ordering abatement of the nuisance.

To-day and Yesterday.

LEGAL CALENDAR.

February 7.—On the 7th February, 1793, the Court of King's Bench decided a curious point. A private soldier had been committed by a magistrate for want of surety for the maintenance of an illegitimate child, of which he was sworn to be the father. It was contended on the part of the soldier that he was not liable to this commitment, for that by the Mutiny Act it was provided that no soldier should be imprisoned except for a crime or for a debt amounting to £20 and that the charge of being the father of an illegitimate child was not a crime by the law of England. Lord Kenyon observed that if incontinence was not a crime (he hoped indeed a venial one) all the proceedings had in the Ecclesiastical Court since its institution were erroneous. The court affirmed the order of commitment.

February 8.—In autumn, 1562, the fourth Earl of Huntley attempted an abortive rising in the region of Aberdeen, one of the many confused incidents of the unhappy reign of Mary, Queen of Scots. The affair flickered out in a skirmish at the hill of Corriche, during which the Earl "suddenly fell from his horse stark dead." His eldest son, John, was taken prisoner and executed. His second son, George, sheriff of the county of Inverness, who had not been present at the battle, was arrested, committed to Edinburgh Castle, and on the 8th February, 1563, brought to the bar, convicted of treason and condemned to be hanged, drawn and quartered "at our sovereigns plesor." The Queen deferred his execution and he was transferred to Dunbar, where he remained till 1565, when he was released and restored to the earldom and all the lands and dignities of his father. On the attainder of the Earl of Morton in the following year, for the murder of Rizzio, Huntley succeeded to the office of Lord High Chancellor.

February 9.—On the 9th February, 1827, the Court of Common Pleas held that a contract for the sale of nutmegs was void because it was made on a Sunday. The Lord Chief Justice, in giving his opinion, observed upon the impropriety of men violating the Sabbath by speculations such as these; were it in his power, he would rejoice in inflicting double the loss, that one of the parties in this case must suffer, on both of them.

February 10.—On the 10th February, 1600, the Inner Temple benchers ordered that "no fellow of this House shall be hereafter called to the outer bar in this House, except he shall keep six vacations before he shall be called, and shall, during all the six vacations, use the exercises of learning to be performed within this House and in the said Houses of Chancery, and there shall sit at four several grand moots in every vacation within the space of the said three years, and except he shall receive the communion in the Temple Church twice in every year of the said three years. And it is further ordered that two of the ancient butlers of this House shall make a note of every fellow of this House that shall sit at the said grand moots."

February 11.—On the 11th February, 1779, a naval court martial sitting at Portsmouth acquitted Admiral Keppel of misconduct and neglect of duty in an action with the French fleet in the previous July. The moving spirit of the prosecution was Vice-Admiral Sir Hugh Palliser, a member of the Admiralty board, who had been present at the engagement in a subordinate command and had himself behaved in a very questionable fashion. Admiral Sir Thomas Pye, the President, announced the finding

that the charges were malicious and unfounded and that so far from having lost opportunity of rendering essential service and thereby tarnished the honour of the British Navy, Keppel had behaved as became a judicious, brave and experienced officer.

February 12.—Sixteen-year-old Lady Jane Grey and her husband, Lord Guilford Dudley, were executed on the 12th February, 1554, he on Tower Hill and she an hour later within the Tower itself. She had refused to see him that morning, as it would but have increased their suffering and they would soon meet in a better world. From the Gentleman Jailer's house she saw his body brought back for burial in St. Peter at Vincula "his carcass throwne into a carte and his hed in a clothe." Soon after, the Lieutenant of the Tower conducted her to the scaffold on Tower Green. She was dressed in black and carried a book from which she prayed. Her two gentlewomen were in tears but she was dry-eyed. She spoke a few words to those gathered around admitting that she had acted unlawfully in allowing herself to be proclaimed queen, but protesting before God her innocence in intention; she also asked their prayers. After a psalm had been recited she herself bandaged her eyes and then kneeling down felt for the block. Someone guided her to it and, having laid her hand on it she said: "Lord, into thy hands I commend my spirit."

February 13.—Catherine Howard, a daughter of the impoverished Lord Edmund Howard, had had several lovers before the ageing Henry VIII, just disembarassed of the unwanted Anne of Cleves, made her his fifth queen, privately marrying her in July, 1540. It was Archbishop Crammer who, in the following year, revealed to the King her past indiscretions. Evidence was also brought to light of infidelity since her marriage, and on the strength of this a bill of attainder was passed through Parliament. On the 13th February, 1542, she was beheaded in the Tower of London. The previous evening she had asked that the block might be brought to her and had made a kind of rehearsal of the coming tragedy. When she was dead a cloth was thrown over the body and some ladies carried it away. Her friend, Lady Rochford, was executed immediately after. "They made the most godly and Christian end that ever was heard of, uttering their lively faith in the blood of Christ only and with godly words and steadfast countenances they desired all Christian people to take regard unto their worthy and just punishment." Catherine was about twenty years old.

DEMONSTRATIONS.

During the hearing of recent murder appeal in the Court of Criminal Appeal, the appellant's counsel gave a demonstration of how the fatal shot might have been fired, holding the revolver in his hand, muzzle towards him. Some years ago in the same place, Mr. Norman Birkett, K.C. (as he then was), gave a similar demonstration coiling a rope twice round his neck. Perhaps the most dramatic of these forensic re-enactments was provided by Marshall Hall at the Old Bailey when he was defending Madame Fahmy, charged with murdering her husband, an Egyptian Prince. His couching, stealthy movements as he described the man's menacing advance upon his wife, his display of the fatal pistol suddenly pointed at the jury, and then dropped rattling on the floor of the court, produced a tremendous effect on all who saw it. Afterwards, discussing the case, he told how, while he was demonstrating with the weapon, he found himself pointing it straight at the judge, and thought "Suppose a cartridge were still left in the magazine and I were to pull the trigger and kill the judge!" As he said, he would indeed have ended his career at the Bar in a blaze of glory. But, he contended, he would have had a perfectly good defence. He would have said the same thing had happened to him as had happened to his client, and they would both have got off. As it was, her triumphant acquittal was fortunately a single one.

Our County Court Letter.

Disrepair of House.

In *Oakes v. Higgins* at Bradford County Court, the claim was for possession of a house, and for £5 arrears of rent. The counter-claim was for £5 as damages for breach of contract. The plaintiff's case was that the house was let on the 12th September, 1942, at a rent of 5s. 6d. a week. The defendant had paid the rent for thirteen weeks, but not afterwards. If he had any complaint, of lack of repair, he should have gone to the local authority, instead of withholding his rent. The defendant was an old-age pensioner, aged sixty-nine, and his case was that he suffered constantly from colds, owing to a hole in the roof, two bedrooms without doors, and the absence of window-catches. This was a breach of the landlord's statutory obligation (under the Housing Act, 1936, s. 2) to keep the house in all respects reasonably fit for human habitation. It was held that the breach of the statutory obligation merely entitled the defendant to determine the tenancy and to claim damages. He was not entitled to remain in the house and not pay rent. The arrears of rent were cancelled, however, by an equivalent sum, to which the defendant was entitled by way of damages. No order for possession was made, and the plaintiff was ordered to pay half the defendant's costs.

Review.

Krusin and Rogers' Solicitors' Handbook of War Legislation.

Volume V. By MAURICE SHARE, B.A. (Oxon), of Gray's Inn, and S. M. KRUSIN, B.A. (Oxon), of the Middle Temple, Barristers-at-Law. 1944. Medium 8vo. pp. xviii and (with Index) 448. London: The Solicitors' Law Stationery Society, Ltd. £2 10s. net.

The present volume in this series is nearly twice the size of the previous volume—an indication of the extent and importance of the matters now dealt with. A turning point in emergency legislation was reached in 1943. On 22nd April, the Courts (Emergency Powers) Act, 1943, was passed, and the War Damage Act, 1943, was passed on 3rd June. Both of these were consolidating measures, and it may be assumed that some degree of finality has now been reached in at least two branches of war-time legislation. The Defence (Fire Guard) Regulations, 1943, were issued on 30th June, and these and the three Fire Guard Orders represent a further attempt at codification. A matter in which law impinges upon executive policy was discussed by the Court of Appeal in *Schering, Ltd. v. Stockholms Enskilda Bank* (1943), 2 All E.R. 486. The whole question is accordingly reviewed in Appendix D, under the title "Contracts with Neutrals." The problems of the private citizen tend to centre on the subject of price-controlled goods. The appropriate Orders (e.g., those relating to soap, coal, sales by auction and tender, motor fuel, etc.) are duly noted under the heading of Defence Regulation 55. The requirements of practitioners in various spheres of law, e.g., agriculture and transport, are met by the inclusion of regulations such as the Horticultural (Cropping) Order, 1943, and the E.P. (Defence) Road Vehicles and Drivers Order, 1943. Not only the matter, but the manner of its presentation, is of the highest quality. Like its predecessor, this volume is produced in complete conformity with the authorised economy standards. The latter are evidently compatible with clear type, good quality paper and excellent book-binding. The learned authors accordingly have the satisfaction of seeing their work presented in a form most attractive to readers.

Books Received.

Wheaton's International Law. Vol. 2—War. Seventh English Edition. By A. BERRIEDALE KEITH, D.C.L., D.Litt., Hon. LL.D., of the Inner Temple, Barrister-at-Law. 1944. Royal 8vo. pp. xxvii and (with Index) 672. London: Stevens and Sons, Ltd. 50s. net.

Weekly Compensation Tables for Total Incapacity under the Workmen's Compensation Acts, 1925 to 1943. With notes on the calculation of Partial Compensation. Compiled by W. A. HARPER, F.C.I.L. 1944. pp. 20. London: Eyre and Spottiswoode (Publishers), Ltd. 2s. 6d. net.

A Guide to Juvenile Court Law. By GILBERT H. F. MUMFORD, Solicitor and Deputy Clerk to the Justices, Gravesend. With an Introduction by T. A. HAMILTON BAYNES, M.A., J.P., Chairman of the Birmingham Juvenile Court Panel. 1944. pp. (with Index) 120. London: Jordan & Sons, Ltd. 5s. net.

Massachusetts Law Quarterly. Vol. XXVII, No. 4. December, 1943.

Interpretation of Documents. By ROLAND BURROWS, K.C., Recorder of Cambridge. 1943. Crown 8vo. pp. lvi, 102 and (Index) 8. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

The Howard Journal. Vol. VI, No. 3. 1943. London: The Howard League for Penal Reform. 1s. net.

Builders' Accounts. By JOHN A. WALBANK & Co., Chartered Accountants. Sixth Edition. 1944. Demy 8vo. pp. (with Index) 79. London: Gee & Co. (Publishers), Ltd. 12s. 6d. net.

Practice Direction.

GRANTS AD COLLIGENDA BONA TO THE CUSTODIANS OF THE PROPERTY OF ALLIED NATIONALS.

It is directed by the President that applications for Orders for Grants, limited to collecting and preserving the estate, to be made to duly appointed Custodians of the property of Allied Nationals who may die whilst serving in the United Kingdom leaving estate in England, in cases where the nearest kin or persons entitled to share in the estate, whether the deceased died testate or intestate, or the executors appointed by his Will are outside the United Kingdom, may be made to a Registrar on affidavit. No surety to the Bond will be required but a Declaration of the Estate must be filed.

If wider powers are sought, it will be necessary to apply by Motion to the Court for an Order for a Grant under the authority of s. 162 of the Judicature (Consolidation) Act, 1925, as amended by s. 9 of the Administration of Justice Act, 1928.

Whether the Order for the Grant is made in the Registry or under the aforementioned sections, two grantees will be required unless it can be sworn that no minority or life interest arises.

H. F. O. NORBURY,

31st January, 1944.

Senior Registrar.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

Services Divorces.

Sir,—As a solicitor serving in His Majesty's Forces, I was interested to read the letter from the Hon. Secretary, The Suffolk and North Essex Law Society, regarding the need for positive action to prevent the breaking up of the homes of service men.

Home is what men in the Forces long for; for home they are ready to fight and die. Yet a regimental quarter-master-sergeant who saw service with the desert armies in Africa told me that on the ship on which he returned home he talked to a large number of men, and over 50 per cent. told him that they did not want to return to England because they were going back to broken homes.

It is a quality of heart that is the foundation for homes that won't crack. If we have the spirit that builds sound homes and a united nation we have a positive force to pass on to our clients that will do more than any legislation. It is seldom that one party is wholly to blame, but when our standards are low we tend to blame the other fellow. Honest apology by one party opens the way of approach to a positive solution.

I know of a naval commander who was approached by one of his men, an excellent sailor with a very good record, with a request to be freed from foreign service. He gave as his reason that his wife was carrying on with another man. He was afraid the home would break up and was worried about the children. The commander was able to tell the man how he and his wife (at one time on the edge of a divorce) had learned through a new faith in God to meet their problems and to build a sound home that stood the strain of war-time living. Then he asked the man: "Do you think that if you do stay in England you can be quite sure the home won't break up?" Rather sheepishly the sailor admitted that he could not be sure, and added, "anyway, it wasn't all the wife's fault." He was given permission to go on ten days' leave and came back to say that all was happy at home again and then he went on in good spirits to join his ship.

Family life once made Britain great. Home building was an art. Lately we seem as a nation to have lost the secret of sound home building. We cannot make a victorious nation out of defeated homes. The first step for us lawyers may be to see the problem of broken homes as a national problem, the solving of which is a national service in which the profession can take a lead, by a constructive approach based not on "Who's right" but on "What's right."

Plymouth,
5th February.

W. IVOR THOMPSON.

Obituary.

MR. J. HASWELL.

Mr. John Haswell, solicitor, senior partner in Messrs. Haswell and Croft, solicitors, of Gateshead, died on Thursday, 27th January, aged fifty-nine. He was admitted in 1912.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

- E.P. 82. **Apparel and Textiles.** Footwear (Manufacture) Directions. Jan. 28.
- E.P. 109. **Coal** (Charges) (Amendment) (No. 1) Order, Jan. 31.
- E.P. 88. **Coal Distribution Order, 1943.** General Direction (Restriction of Supplies) No. 4, Jan. 25.
- E.P. 90. **Consumer Rationing.** General Licence, Jan. 27, re Down Pointing of certain garments.
- E.P. 81. **Consumer Rationing.** General Licence, Jan. 27, re Hand Knitting Yarn for Export.
- E.P. 108. **Flowers** (Isle of Scilly) (Amendment) Order, Feb. 1.
- E.P. 87. **Fresh Fruit, Vegetables and Flowers** (Use of Containers) Order, Jan. 26.
- E.P. 101. **Men's, Youths' and Boys' Civilian Clothing.** Civilian Clothing. (Restrictions) (No. 2) Order, Jan. 27.
- E.P. 79. **Police Amalgamation** (Hampshire) Order, Jan. 18.
- E.P. 72. **Railways** (Acceptance of Merchandise) Order, Jan. 21.
- No. 76. **Trading with the Enemy** (Authorization) Order, Jan. 26.

BOARD OF TRADE.

Companies Act, 1929. Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. Seventh Day, Dec. 10, 1943.

The Lord Chancellor has been admitted to the freedom and livery of the Worshipful Company of Glaziers and Painters on Glass. The ceremony, which normally takes place in Guildhall, was held in the Jerusalem Chamber at Westminster Abbey, since the Dean of Westminster (Dr. de Labilliere) is a member of the court of the Glaziers' Company. The ceremony of handing over the scroll was performed by Mr. J. S. Stooke-Vaughan, master of the company.

Notes of Cases.

COURT OF APPEAL.

Racecourse Betting Control Board v. Secretary of State for Air. Lord Greene, M.R., MacKinnon and Goddard, L.J.J. 20th December, 1943.

Emergency legislation—Land requisition—Compensation—Assessment by General Claims Tribunal—Jurisdiction of court to set aside assessment—Arbitration—Compensation (Defence) Act, 1939 (2 & 3 Geo. 6, c. 75), ss. 7 and 8 (3).

Appeal from a decision of Uthwatt, J. (87 SOL. J. 175).

The plaintiffs were the owners of certain buildings on a racecourse, possession of which had been taken by the defendant, the Secretary of State for Air, on behalf of His Majesty. The plaintiffs' claim for compensation had been referred to the General Claims Tribunal established under the Compensation (Defence) Act, 1939, s. 7, and the compensation payable was assessed at £610 per annum. The plaintiffs claimed £6,602 per annum. By this motion the plaintiffs asked to have the award of the General Claims Tribunal set aside on the ground that it was erroneous in law. The preliminary objection was taken by the defendant that the court had no jurisdiction to hear the motion. That objection was overruled by Uthwatt, J., who dismissed the motion on the merits. The plaintiffs appealed. The same objection was taken to the jurisdiction by the defendant on the appeal. The Compensation (Defence) Act, 1939, by s. 7, set up the General Claims Tribunal and provided that the decision of that tribunal was to be final.

LORD GREENE, M.R., said that the first argument of the appellants was that the jurisdiction to set aside the award of an arbitrator for error of law appearing on its face was one which existed at common law independently of the Arbitration Acts, that jurisdiction not being confined to consensual arbitrations but extending to arbitrations under statutes. Both these propositions were correct (*Hodgkinson v. Fernie*, 3 C.B. (N.S.) 189; *In re Jones and Carter's Arbitration* [1922] 2 Ch. 599). The next proposition, which could not be supported, was that this jurisdiction was not confined to the awards of arbitrators but extended to the decision of every form of inferior tribunal; and, accordingly, where the Legislature had established a special tribunal, whether or not it could be described as an arbitration tribunal, the court could set aside a decision given by it if an error of law appeared upon its face, this jurisdiction existing quite independently of the old procedure by writ of error. No authority was cited in support of this proposition and, in his opinion, it was wrong in principle. In the case of an inferior court, if it acted beyond its jurisdiction, the remedy was by *certiorari*. If, acting within its jurisdiction, it made an error in law, the remedy was by appeal, if the decision was appealable. In the case of new tribunals set up under statute, no appeal would lie unless the right of appeal was conferred expressly or impliedly by statute. Accordingly, where, as in the present case, no right of appeal was given, these decisions were not appealable. The alternative argument of the appellant was that the General Claims Tribunal was a statutory arbitration tribunal and its decision could accordingly be challenged on the ground of an error of law upon the face of it. Uthwatt, J., expressed the view that every tribunal must be either an arbitral tribunal or a court. His approach to the problem was an erroneous one. The Legislature could set up any kind of tribunal that it pleased. The question was, had the Legislature placed this tribunal in the category of arbitral tribunals, or was it a special tribunal which fell outside that category and was governed exclusively by its own code. The former question must be answered in the negative and the latter in the affirmative. The objection to the jurisdiction succeeded and the appeal must be dismissed.

MACKINNON and GODDARD, L.J.J., agreed in dismissing the appeal.

COUNSEL: *Comyns Carr*, K.C., and *Frederick Grant*, K.C.; *The Attorney-General* (Sir Donald Somervell, K.C.), *H. O. Dunckwaerts* and *Hon. H. L. Parker*.

SOLICITORS: *Sharpe, Pritchard & Co.*; *Treasury Solicitor*.
[Reported by Miss B. A. BUCKSELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re Hooper; Phillips v. Steel.

Uthwatt, J. 21st December, 1943.

Will—Construction—Bequest of an annuity "free of all deductions"—Whether free of income tax.

Adjourned summons.

The testator by his will dated the 28th December, 1932, made a bequest in the following terms: "I give free of all duty to my secretary S . . . an annuity of £250 during her life without power of anticipation such annuity to begin from the date of my death and to be paid free of all deductions whatsoever . . ." The testator provided for the appropriation of a fund to answer the annuity. He died in 1940 and this summons raised the question whether the annuity was given free of income tax.

UTHWATT, J., said that annuities given by will were charged to income tax under the Income Tax Act, 1918, Sched. D, Case III. The annuity was paid in full, in part by cash paid to the annuitant and in part by satisfaction, in accordance with the provisions of the Act, of the income tax exigible in respect of it. No deduction had in law or in fact been made from it. The question which gave rise to difficulty was whether in any particular will there was an intention to make the annuity, or the annual sum expressed to be payable, a net sum after income tax had been accounted for. To achieve that object it was not necessary that income tax should in terms be referred to. The effect of the cases, which began with *Lethbridge v. Thurlow*, 15 Beav. 334, and continued in a stream to the present day, was that income tax was not to be regarded as included in a

direction to pay an annuity "free from deductions" unless there was shown in the will an intention that income tax was to be treated as a deduction. In this case the will was expressed in technical terms. Freedom from death duties was expressly provided for. The rest of the will contained nothing which suggested that that income tax was treated as a deduction. The sole question, therefore, was whether, in the absence of any explanatory matter, it was proper to draw the inference that income tax was treated by the testator as a deduction for the purpose of this gift merely from the fact that, unless so treated, the phrase had no application at all. It was sounder to treat the phrase "without any deductions whatsoever" as meaningless rather than, in an instrument drawn in technical terms, to attribute to it a meaning which it did not bear in law, and which had been denied to it by authority for nearly a century. In *In re Courlisshaw* [1939] Ch. 654, Bennett, J., came to the opposite conclusion. He differed with diffidence from that judge, but that case was distinguished by Simonds, J., in *In re Wells' Will Trusts* [1940] 1 Ch. 411. He would declare that the annuity was not given free of income tax.

COUNSEL: Wilfrid Gutch; Wilfrid Hunt; R. J. T. Gibson; Winterbottom.

SOLICITORS: Beachcroft & Co.; Potchecary & Barratt, for Hawkins & Co., Hitchin; Syrett & Sons.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Lee v. Inland Revenue Commissioners.

Macnaghten, J. 19th October, 1943.

Revenue—Sur-tax—Life annuities—Contemporaneous agreements to repay in some cases whole amounts of annuities—In other cases amounts of annuities repaid at request of donor, less certain sums—Trust to pay annuity for life to donor and his wife in trust for sister-in-law—Repayment by trustees of annuity to donor—Whether any annuity within mischief of statutory provisions and deemed to be income of donor for purposes of tax—Finance Act, 1922 (12 & 13 Geo. 5, c. 17), s. 20 (1) (b).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

L. on various dates executed various deeds under which he respectively covenanted to pay certain life annuities to his daughter and certain sisters-in-law. In certain cases the respective donees agreed contemporaneously to pay back to L. the respective amounts of the annuities. In certain other cases at the request of L. the donees paid back the respective amounts less certain sums. In another case L. covenanted to pay a life annuity to himself and his wife as trustees for one of his sisters-in-law, and the money payable under that annuity for the first year was paid by L. to himself and his wife in pursuance of the covenant, but he and his wife subsequently handed the money back to L. The Crown claimed that all these annuities and the transactions concerned with them came within the mischief of s. 20 (1) (b) of the Finance Act, 1922, and that L. was liable for sur-tax on all the amounts of the annuities which he had paid. Section 20 provides as follows: "(1) Any income . . . (b) which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the first day of May, nineteen hundred and twenty-two (other than a disposition made for valuation and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years; . . . shall, subject to the provisions of this section, . . . be deemed for the purposes of the enactments relating to income tax (including super-tax) to be the income of the person who is or was able to obtain the beneficial enjoyment thereof, or of the person, if living, by whom the disposition was made, as the case may be, and not for those purposes the income of any other person . . ."

MACNAGHTEN, J., said, in the case of the contemporaneous agreements to repay the respective annuities to L., no annuities had really been paid, and L. was liable to pay tax on the amounts of those annuities. In the case of those annuities which had been paid back to L. less certain sums, the amounts which had been paid back were liable to tax, but the sums which had been retained were not liable to tax. In the case of the annuity paid to L. and his wife upon trust to pay the same to the sister-in-law, L. and his wife still remained trustees for the sister-in-law and she could enforce the payment of the annuity to her. Therefore, in that case the transaction was not caught by s. 20 (1) (b) of the Act, and, therefore, the amount of that annuity was not liable to tax.

COUNSEL: Frederick Grant, K.C., *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), J. H. Stamp, and R. P. Hills.

SOLICITORS: Ashurst, Morris, Crisp & Co.; Solicitor of Inland Revenue.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Curzen Offices, Ltd. v. Inland Revenue Commissioners.

Macnaghten, J. 21st October, 1943.

Revenue—Stamp duty—Conveyance or transfer on sale—Sale of leasehold premises by one company to another—Transferor company owning more than 90 per cent. of shares of transferee company—Guarantee by third company of part of purchase price—Remainder of purchase price remaining on mortgage of premises to transferor company—Agreement between third company and transferor company to buy all the shares in the transferee company—Statutory provisions that no ad valorem stamp duty payable where transaction between companies, one of whom owns over 90 per cent. of shares of other—Subsequent statutory provisions making ad valorem duty payable where a non-associated company provides consideration for transfer—Third company held to have provided whole consideration—Ad valorem stamp duty payable—Stamp Act, 1891 (54 & 55 Vict., c. 39), s. 1, Sched. 1—Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 42—Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 50.

Case stated by the Inland Revenue Commissioners pursuant to s. 13 of the Stamp Act, 1891.

This was an appeal by the C company from the decision of the Commissioners that an *ad valorem* stamp duty was chargeable under the heading "conveyance or transfer on sale" within the meaning of Sched. 1 of the Stamp Act, 1891, on a transfer dated 30th March, 1942, whereby the H company, as beneficial owner, transferred to the C company certain leasehold property for the consideration of £568,078. Before the sale was effected the R company agreed to buy the whole of the share capital of the C company which was owned by the H company. It was also arranged that £329,674 of the purchase price should be left on mortgage of the property to the H company and that the remaining part of the purchase price, namely, £238,404, should be paid in cash by the C company, who had borrowed it from a bank on mortgage and under the guarantee of the R company. As the H company at the date of the transfer owned all the shares of the C company, no stamp duty under the heading "conveyance or transfer on sale" would have been chargeable by reason of the provisions of s. 42 of the Finance Act, 1930, were it not for the provisions of s. 50 of the Finance Act, 1938. The relevant parts of s. 42 of the Act of 1930 provide as follows: "(1) Stamp duty under the heading 'conveyance or transfer on sale' . . . shall not be chargeable on an instrument to which this section applies . . . (2) This section applies to any instrument as respects which it is shown to the satisfaction of the Commissioners of Inland Revenue—(a) that the effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability to another such company; and (b) that either (i) one of the companies is beneficial owner of not less than 90 per cent. of the issued share capital of the other company . . ." The relevant provisions of s. 50 of the 1938 Act are as follows: "(1) Section 42 of the Finance Act, 1930 (which relieves from stamp duty any instrument the effect whereof is to convey or transfer a beneficial interest in property from one associated company to another (in this section respectively referred to as the 'transferor' and 'transferee')) shall not apply to any such instrument, unless it is shown to the satisfaction of the Commissioners of Inland Revenue that the instrument was not executed in pursuance of or in connection with an arrangement whereunder—(a) the consideration for the transfer or conveyance was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or transferee . . . (2) For the purpose of this section, a company shall be deemed to be associated with another company if, but not unless both are companies with limited liability, and either—(a) one of them is the beneficial owner of not less than 90 per cent. of the issued share capital of the other . . ." The Crown contended that as the R company had at any rate indirectly provided the consideration for the transfer by means of its guarantee and as the R company was not a company associated at the time of the transfer with either the H company or the C company within the meaning of s. 50 of the 1938 Act, therefore, by the provisions of that section, the provisions of s. 42 of the 1938 Act did not apply to the transfer and therefore it was a "conveyance or transfer on sale" within the meaning of Sched. 1 of the Stamp Act, 1891, and was liable thereunder to *ad valorem* stamp duty. It was contended on behalf of the C company that as only part of the purchase price, namely, the sum of £238,404, had been guaranteed by the R company, and as the provisions of s. 50 of the 1938 Act contemplated the whole of the consideration being provided by a non-associated company, therefore, those provisions did not apply, and therefore *ad valorem* stamp duty was not payable by reason of the provisions of s. 42 of the 1930 Act.

MACNAGHTEN, J., said that the R company had provided the whole consideration, for if the H company called in the mortgage money of £329,674 the R company would have to provide the money either out of its own resources or else out of the resources of the C company, for the R company would by that time be the owner of all the shares of the C company, and in that event the result would necessarily be that the value of the shares would *pro tanto* be diminished, and the R company would, therefore, indirectly have provided the money to pay off the mortgage. Consequently the provisions of s. 50 of the Act of 1938 applied and *ad valorem* stamp duty was chargeable on the transfer. Appeal dismissed.

COUNSEL: Frederick Grant, K.C., and M. L. Gedge; *The Attorney-General* (Sir Donald Somervell, K.C.), J. H. Stamp and R. P. Hills.

SOLICITORS: Ashurst, Morris, Crisp & Co.; Solicitor of Inland Revenue.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Director of Public Prosecutions v. Kent and Sussex Contractors, Ltd.

Lord Caldecote, L.C.J., and Macnaghten and Hallett, JJ.

11th November, 1943.

Emergency legislation—Criminal liability of company for acts of its agents—Intent to deceive—Defence (General) Regulations, 1939 (S.R. & O., No. 927), regs. 55 and 82 (1) and (2)—Motor Fuel Rationing (No. 3) Order, 1941 (S.R. & O., No. 1592), art. 12 (1).

Appeal by way of case stated from a decision of the Glamorgan Justices dismissing informations charging a breach of regs. 55 and 82 (1) (c) of the Defence (General) Regulations, 1939, in having with intent to deceive made use for the purpose of the Motor Fuel Rationing (No. 3) Order, 1941, of a document, namely, a fortnightly vehicle record in respect of a motor vehicle, which was false in a material particular, and a breach of regs. 55 and 82 (2) of the Defence (General) Regulations, 1939, in having, in furnishing information in respect of the same vehicle for the purposes of the same order, made a statement knowing it to be false in a material particular. The justices accepted the contention of the defendants that a body corporate could not be guilty of the offences charged because there was implicit in those offences an act of will or state of mind.

LORD CALDECOTE, L.C.J., cited *R. v. Cory Brothers & Company* [1927] 1 K.B. 810, and *R. v. Birmingham and Gloucester Railway Company*, 3 Q.B. 223, per Patteson, J., at p. 232; *Mackay v. Commercial Bank of New Brunswick*, L.R. 5 P.C. 394, at p. 415; *Chuter v. Freeth & Pocock, Ltd.*

[1911] 2 K.B. 832, at pp. 834 and 836; *Pearks, Gunston & Tee v. Ward* [1902] 2 K.B. 1, per Channell, J., at p. 11; *Moussell Brothers v. London and North Western Railway Co.* [1917] 2 K.B. 836, per Atkin, J., at pp. 845, 846; *Pharmaceutical Society v. London and Provincial Supply Association*, L.R. 5 A.C. 857, per Lord Blackburn, at p. 870; and *Law Society v. United Service Bureau, Ltd.* [1934] 1 K.B. 343, per Avory, J., at p. 349, and said that there was ample evidence on the facts which had been proved or admitted that the company had, by the only people who could act or speak or think for it, made a return with intent to deceive, and, in the second case, made a statement which it knew to be false in a material particular. There was nothing in the authorities requiring the court to say that a company was incapable of being held guilty of those offences. The justices were wrong, and the case should go back to them with an intimation of the court's opinion for determination on the facts.

MACNAGHTEN, J., said that if the responsible agents of a body corporate did an act such as making a document or putting forward a document which had been made by somebody else knowing it to be false and intending that it should deceive, according to the authorities, knowledge of the intention to deceive must be imputed to the company, and the responsible knowledge of the agents of the company must also be imputed to the body corporate.

HALLETT, J., said that the words "any person" in reg. 82, *prima facie* included a limited liability company (Interpretation Act, 1889, s. 2 (1)). The liability of a body corporate was in all cases a vicarious liability for the acts of other persons. His lordship referred to *Pharmaceutical Society v. London and Provincial Supply Association*, *supra*, and *R. v. Tyler and International Commercial Company* (1891), 2 Q.B. 588, per Bowen, L.J., at p. 594; *Pearks, Gunston & Tee, Ltd. v. Ward*, *supra*; *Moussell Brothers v. London and North Western Railway Company*, *supra*; *Law Society v. United Service Bureau, Ltd.*, *supra*, and *Triplex Safety Glass Company v. Lancegaye Safety Glass (1934), Ltd.*, 160 L.J. 595, and agreed that the appeal should be allowed.

COUNSEL: Colin Duncan; Carey Evans.

SOLICITORS: *The Treasury Solicitor*; *Stephenson, Harwood & Tatham*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Knott v. Blackburn.

Lord Caldecote, L.C.J., and Macnaghten and Tucker, JJ.

23rd November, 1943.

Criminal law—In railway sidings—Meaning of "enclosed area"—Construed ejusdem generis with preceding words—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

Appeal by way of case stated from a decision of the justices at Warrington dismissing an information under s. 4 of the Vagrancy Act, 1824, charging the respondent with being found in an enclosed area, to wit, railway sidings, for an unlawful purpose.

Under the section every person being found in or upon any dwelling-house, warehouse, coachhouse, stable or outhouse, or in any enclosed yard, garden or area, for any unlawful purpose is to be deemed a rogue and vagabond and dealt with accordingly under the Act. The sidings, which were securely fenced, formed part of a larger enclosed area. The justices held that the word "area" must be construed *ejusdem generis* with "yard" and "garden" and must be enjoyed with one of the buildings specified in the section.

LORD CALDECOTE, L.C.J., said that the word "area" would not have been used in 1824 in this context to describe the large spaces which at that time were frequently to be found all over the country enclosed by ring fences. The two words "yard" and "garden" were plainly of limited scope. Either of them might, at the most, run to a comparatively small number of acres. Bearing in mind that s. 4 was a penal section, his lordship thought that the word "area" should be construed in the sense in which the justices had construed it. The use of the word "area" to denote that part of the basement of a house which was open to the air was familiar to most people to-day. That was the right interpretation. If that was not right, the argument must proceed to such extreme lengths as to make either the use of the word inept, or the inclusion of the words "yard" or "garden" unnecessary. The appeal would be dismissed.

MACNAGHTEN, J., agreed, and added that he preferred to leave open for consideration whether the words "enclosed area" might apply to an enclosure which was not connected with a house. There were in some places small pieces of enclosed ground in connection with such things as waterworks and electricity works, and those areas might be "enclosed areas" within the Act.

TUCKER, J., agreed, and added that, speaking for himself, he would desire to reserve consideration of the question whether an "area" must always be an excavated piece of land. Appeal dismissed.

COUNSEL: *Vernon Gattie*.

SOLICITOR: *Alexander Eddy*, Manchester.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

Disabled Persons (Employment) Bill [H.C.].

India (Attachment of States) Bill [H.L.].

Supreme Court of Judicature (Amendment) Bill [H.C.].

Read First Time.

London, Midland and Scottish Railway Bill [H.L.].

Read First Time.

HOUSE OF COMMONS.

Anglesey County Council (Water, etc.) Bill [H.C.].

Chesterfield and Bolsover Water Bill [H.C.].

Kingston-upon-Hull Corporation (Air Transport) Bill [H.C.].

Kingston-upon-Hull Corporation (Development, etc.) Bill [H.C.].

Middlesex County Council Bill [H.C.].

Nottinghamshire and Derbyshire Traction Bill [H.C.].

Read First Time.

Beckett Hospital and Dispensary, Barnsley, Bill [H.C.].

City of London (Various Powers) Bill [H.C.].

Connah's Quay Gas Bill [H.C.].

London and North Eastern Railway Bill [H.C.].

Yorkshire Registries (West Riding) Amendment Bill [H.C.].

Read Second Time.

Education Bill [H.C.].

In Committee.

Guardianship (Refugee Children) Bill [H.C.].

Read Second Time.

Income Tax (Offices and Employments) Bill [H.C.].

Read First Time.

Landlord and Tenant (Requisitioned Land) Bill [H.L.].

Read Third Time.

Prize Salvage Bill [H.L.].

Read First Time.

Public Works Loans Bill [H.C.].

Read Second Time.

Reinstatement in Civil Employment Bill [H.C.].

Read Second Time.

QUESTIONS TO MINISTERS.

PREVENTION OF FRAUD (INVESTMENTS) ACT.

MR. LIDDALL asked the President of the Board of Trade whether he will shortly take steps to put the Prevention of Fraud (Investments) Act, 1939, into full operation.

MR. DALTON: Yes, Sir. I have decided to fix 15th April as the date by which applications for licences to deal in securities must be submitted to my Department. Some further time must be allowed for consideration of these applications, and I aim at bringing the Act into full operation by the middle of July next.

CESSATION OF HOSTILITIES.

MR. MATHERS asked the Prime Minister if he can yet state the principle which will be applied in determining the date of the end of the war or the cessation of hostilities, as at that date, or a fixed period thereafter, certain wartime agreements come to an end.

MR. CHURCHILL: No doubt at some date hostilities will cease in the different theatres of war. It is not for me to state what principles the courts would apply in construing the terms of agreements. Nor am I prepared at present to make any statement as to the principles on which the United Nations will proceed in determining any formal date upon which the war will be deemed to be concluded.

MR. MATHERS: Will the Prime Minister realise that I am really trying to obtain in more precise terms what is meant by a statement such as that in the Railway Control Agreement, which says that control will cease at a minimum of one year after the cessation of hostilities; and could he not put the matter further forward than in the statement he has just made?

THE PRIME MINISTER: I certainly see the difficulties, but I do not see a way round them.

SIR HERBERT WILLIAMS: As a great many agreements have been concluded on the basis of the words "termination of the present emergency," and having regard to the fact that these words appear in the Emergency Powers Act, will the right hon. gentleman look into the question?

THE PRIME MINISTER: The courts will have to decide upon these matters in the absence of legislation by Parliament.

MR. A. BEVAN: In view of the fact that the courts will have exactly the same difficulty as the right hon. gentleman, will the Government make inquiries into the matter and determine upon some form in order to guide the courts in the matter?

THE PRIME MINISTER: I certainly think the matter must always be considered but although the courts have the same difficulties as we have, it is their business most specifically to solve them as each case arises—[HON. MEMBERS: "No"]—in the absence of legislation.

MR. W. J. BROWN: Is there any reason why the Government should not do what they did at the end of the last war, and define a date as marking the end of the war?

THE PRIME MINISTER: It will be so much easier to define that date when we have actually reached it.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1944

DATE.	ROTA OF REGISTRARS IN ATTENDANCE ON			
	EMERGENCY ROTA.		APPEAL COURT I.	
Monday, Feb. 14	Mr. Farr	Mr. Reader	Mr. Justice SIMONDS.	Mr. Justice UTHWATT.
Tuesday, " 15	Mr. Blaker	Mr. Hay	Mr. Farr	Mr. Blaker
Wednesday, " 16	Mr. Andrews	Mr. Farr	Mr. Jones	Mr. Andrews
Thursday, " 17	Mr. Jones	Mr. Blaker	Mr. Jones	Mr. Jones
Friday, " 18	Mr. Reader	Mr. Andrews	Mr. Reader	Mr. Reader
Saturday, " 19	Mr. Hay	Mr. Jones	Mr. Reader	Mr. Hay

DATE.	GROUP A.			
	Mr. Justice COHEN	Mr. Justice VAISEY	Mr. Justice MORTON	Mr. Justice UTHWATT
Monday, Feb. 14	Mr. Farr	Mr. Jones	Mr. Blaker	Mr. Farr
Tuesday, " 15	Mr. Andrews	Mr. Reader	Mr. Jones	Mr. Andrews
Wednesday, " 16	Mr. Reader	Mr. Hay	Mr. Jones	Mr. Jones
Thursday, " 17	Mr. Farr	Mr. Blaker	Mr. Hay	Mr. Reader
Friday, " 18	Mr. Jones	Mr. Andrews	Mr. Farr	Mr. Hay
Saturday, " 19	Mr. Blaker	Mr. Jones	Mr. Farr	Mr. Hay

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